

Steven S. Rand
Tarique N. Collins
ZEICHNER ELLMAN & KRAUSE LLP
575 Lexington Avenue
New York, New York 10022
(212) 223-0400

Attorneys for Berkadia Commercial Mortgage, LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GRAND MANOR HEALTH RELATED FACILITY, INC.,
Plaintiff,

– against –

HAMILTON EQUITIES COMPANY, HAMILTON
EQUITIES, INC., ROBERT NOVA, SUZAN
CHAIT-GRANDT, MACRON & COWHEY, P.C.,
and JOHN MACRON,

Defendants.

HAMILTON EQUITIES COMPANY, HAMILTON
EQUITIES, INC., ROBERT NOVA, SUZAN
CHAIT-GRANDT, MACRON & COWHEY, P.C., and
JOHN MACRON,

Defendants/
Interpleading Plaintiffs,

– against –

BERKADIA COMMERCIAL MORTGAGE, LLC
and the UNITED STATES DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT,

Interpleaded Defendants.

HAMILTON EQUITIES COMPANY, HAMILTON
EQUITIES, INC., ROBERT NOVA, SUZAN
CHAIT-GRANDT, MACRON & COWHEY, P.C., and
JOHN MACRON,

Defendants/
Third-Party Plaintiffs,

– against –

GRAND MANOR HEALTH RELATED FACILITY,
GARFUNKEL WILD, P.C., ROY W. BREITENBACH,
ESQ., and MARTIN LIEBMAN.,

Third-Party Defendants.

Case No.: 12 Civ. 4916 (JGK)

**DECLARATION IN SUPPORT
OF MOTION TO DISMISS
SUPPLEMENTAL COMPLAINT
AS AGAINST INTERPLEADER
DEFENDANT BERKADIA
COMMERCIAL MORTGAGE, LLC**

MICHAEL MASON, pursuant to 28 U.S.C. § 1746 and under the penalties of perjury, declares:

1. I am a Vice President of Berkadia Commercial Mortgage, LLC. I make this Declaration in support of Berkadia's motion to dismiss the Supplemental Complaint based on the books and records of Berkadia, which are in my possession and/or subject to my review.

2. The terms of the Mortgage between Hamilton Equities and Berkadia provide as follows:

The mortgagor further covenants as follows:

... 5. that upon default hereunder, Mortgagee shall be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession and protect the property described herein and operate same and collect the rents profits and income therefrom... (See the Mortgage, ¶ 5 thereto, a copy of which is attached as an exhibit to the Supplemental Interpleader Complaint.)

3. Despite periodic missed mortgage payments in the past, Hamilton Equities is presently current with its mortgage payments.

4. As such, Berkadia does not at this time seek the appointment of a receiver of rents.

5. Moreover, as the appointment of a receiver would necessarily warrant payment of reasonable receiver fees, among other costs, Berkadia would be prejudiced by the appointment of a receiver.

6. Therefore, Berkadia respectfully requests that this court dismiss so much of the Supplemental Complaint that asserts a claim for an order compelling Berkadia to seek the appointment of a receiver of rents, and for such other further relief as may be necessary and proper.

I declare that the foregoing is true and correct.

Dated: Dec 12, 2012


MICHAEL MASON